

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

OSCAR JESSE CHURCHILL,

Appellant.

No. 39136-8-II

UNPUBLISHED OPINION

Penoyar, J. — Oscar Jesse Churchill appeals from an order revoking his 2007 special sex offender sentencing alternative (SSOSA), claiming that the evidence did not support the trial court’s finding that Churchill violated his SSOSA by contacting a minor female and claiming that the trial court’s failure to enter written findings of fact and conclusions of law requires reversal of the revocation order. We affirm.

Facts

On October 6, 2008, Community Corrections Officer (CCO) Michael Boone filed a notice of violation with the Thurston County Superior Court. The notice alleged that Churchill had contact with a minor female in his neighborhood on September 21, 2008, and on September 28, 2008. On October 9, 2008, the State filed a motion to modify or revoke Churchill’s SSOSA based on these alleged violations.¹

¹ In 2005, Churchill disclosed to ES’s mother that he had exposed himself to ES in 1999, when she was 6 or 7 years old. Churchill sought treatment. His treatment provider, following his statutory obligation, informed the police, which led to Churchill’s 2007 guilty plea on a first degree child molestation charge.

The trial court held an evidentiary hearing in which MY (the minor female), Marty Gunderson (a polygrapher), and Boone testified for the State. Patrick Seaberg (a polygrapher), Brian Cobb (Churchill's sex offender treatment provider), and Churchill testified on Churchill's behalf.

MY testified that on September 21, 2008, she was walking on trails in a greenbelt near her home and Churchill was on his bicycle. She testified that he would pass her then circle back and move in and out of the woods. The State asked if he said anything to her and she responded, "No." Report of Proceedings (RP) (Mar. 16-17, 2009) at 58. She testified that on September 28, 2008, she was sitting on a rock in the same area when Churchill appeared again on his bicycle and with his dog. This time, as he rode past her, he said hi or hello. She nodded and then ran off into the woods. She also explained that after the first incident, she learned that Churchill was a registered sex offender.

Churchill denied that he had any contacts with MY. In evaluating these denials, Gunderson testified that Churchill showed deception during a polygraph examination to the question, "Did you have verbal contact with the girl you saw the days you were riding around your neighborhood?" RP (Mar. 16-17, 2009) at 82. Gunderson also reviewed Seaberg's polygraph reports and found them to be inconclusive.

Boone testified that Churchill had three previous violations. Churchill had stipulated to these violations and the court imposed a 30-day jail-time sanction, allowing work release.² Boone also testified about the September violations.

² The allegations were that he had entered into a romantic relationship with an adult female (who had a minor child that was not living with her) without informing his CCO, that he had said hi to a minor boy in a Subway restaurant, and that he had used the internet for personal use.

Seaberg testified that he also conducted a polygraph examination regarding the September allegations. He found no deception in Churchill's responses to the question of whether he, Churchill, had verbal contact with the girl in the greenbelt. He asked three other polygraphists to review his charts and they all concurred in his conclusion that Churchill was not deceptive in his answers. He conceded, though, that three polygraphists in the sheriff's office that reviewed his charts had reached an opposite conclusion.

Cobb testified about Churchill's treatment progress and lapses. He recommended that the court put Churchill on probationary status and not revoke his SSOSA because he believed that Churchill posed a minimal risk to the community and was amenable to treatment.

The trial court decided to revoke Churchill's SSOSA, finding that he violated his SSOSA condition on September 28 by greeting MY. The trial court explained:

With regard to the alleged violations, the violations specified are: One, having contact with a minor on or about 9-21, 2008; and violation two, having contact with a minor on or about September 28th, 2008. First of all, I want to say that I appreciate the advocacy on both sides. This is a very serious matter, and I appreciate that counsel does take it seriously on both sides. And that testimony was brought to bear on both sides, which is an important thing in such an important question.

I am finding that there was no violation on 9-21-08, but that there was a violation on 9-28-08, having contact with a minor. The evidence that I am relying upon in support of the violation on 9-28-08 is the testimony of [MY], the testimony of Michael Boone, and the testimony of others as well. Specifically, with regard to the polygraphs, I am somewhat skeptical of the polygraphs in this case, but I think what's important is that the questions that were asked were different by each of the polygraph examiners, and I think that that -- the difference in the questions makes a difference in the outcome of this case because of the testimony, which I agree was a little bit different from the violation, that there was communication on the 28th of September and not on the 21st. So I think the difference in the questions by the polygraph examiner does make a difference.

And Mr. Churchill, in his testimony, did not say that he turned around and left the greenbelt area when he knew that there was a minor in the area, and apparently no one else in the area, although that was not clear. But based upon the evidence that I cited to, there is sufficient evidence to meet the burden that the State has to find the violation on number two, having contact with a minor on or about 9-28-08, and that's my finding.

RP (Mar. 16-17, 2009) at 221-22. The trial court then revoked the SSOSA and imposed 68 months' incarceration.³

analysis

I. Standard of Review

We review the revocation of a SSOSA sentence for a proper exercise of discretion. *State v. Ramirez*, 140 Wn. App. 278, 290, 165 P.3d 61 (2007). A trial court improperly exercises its discretion when its decision is manifestly unreasonable, rests on untenable grounds, and is supported with untenable reasons. *State v. Dixon*, 159 Wn.2d 65, 75-76, 147 P.3d 991 (2006) (quoting *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)). So long as the State proves a violation of a SSOSA sentence condition by verified facts, the trial court may revoke the SSOSA sentence or impose a lesser sanction. *State v. Dahl*, 139 Wn.2d 678, 683, 990 P.2d 396 (1999). We view the evidence in a light most favorable to the State. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). We do not review credibility determinations, *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); instead, we defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

³ Churchill committed his offense in 1999 and thus has a determinate sentence.

II. Sufficiency of the Evidence

Churchill acknowledges that evidence supports the violation but argues that this evidence, taken in context of all the other evidence, was simply not credible. He notes first that MY did not identify him as the man she saw in the greenbelt on September 21 and 28. Second, Gunderson's polygraph, which found deception, is not credible when compared with Seaberg's because Seaberg had his charts and conclusions reviewed by three other polygraphists and no one reviewed Gunderson's. Third, Churchill did not recognize MY and adamantly denied that he said anything to MY. And fourth, MY learned after September 21 that Churchill was a registered sex offender.

Essentially, Churchill is asking us to make a credibility determination, which, as an appellate court, we do not do. *Camarillo*, 115 Wn.2d at 71. Evidence that MY reported her encounter to her mother, explained the events to a police officer, and testified in open court, subject to cross-examination, strongly supports the State's case. The central issue at trial was whether Churchill rode past her on his bike and said hi or hello while doing so. MY's testimony, Gunderson's polygraph, Gunderson's review of Seaberg's polygraph, and evidence that the police polygraphers reached an opposite conclusion than Seaberg from Seaberg's charts support the trial court's finding of a violation. Because we take the evidence in a light most favorable to the State in evaluating this type of claim, we find it sufficient to establish that Churchill violated a SSOSA condition when he initiated contact with MY, a minor female.

III. Lack of Findings of Fact and Conclusions of Law

The State procured findings of fact and conclusions of law after Churchill filed his opening brief complaining that the State had not fulfilled its obligation. Churchill now complains that the findings have been tailored to disregard the exculpatory testimony and serve only to support the revocation order.

First, written findings of fact and conclusions of law are not mandatory in revocation proceedings and if the trial court made a reasoned decision on the record that makes the basis for its decision clear, we need not remand for entry of findings and conclusions. *See State v. Abd-Rahmaan*, 154 Wn.2d 280, 290, 111 P.3d 1157 (2005); *Dahl*, 139 Wn.2d at 689. Second, we have reviewed the record in detail in deciding that the record supported the trial court's decision that Churchill violated a SSOSA condition; we do not rely solely on the trial court's written findings of fact. While Churchill argues that it is contradictory that the trial court found a violation on September 28, but not on September 21, we find no such contradiction because MY testified that Churchill did not say anything to her on September 21, speaking with her only on September 28. Finally, our review does not show that the State's late procurement of findings prejudiced Churchill's right of review.

IV. Statement of Additional Grounds

In his statement of additional grounds, Churchill asks us to review a police report and a letter he wrote regarding his first violations. He also describes the greenbelt in which his current violation occurred. He does not, however, raise any new issue that we need to address and to the extent his statement relies on matters in the appellate record, we have considered them. *See State v. McFarland*, 127 Wn.2d 322, 338 n.5, 899 P.2d 1251 (1995) (court may not consider matters

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outside the record on direct review).

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Penoyar, C.J.

We concur:

Armstrong, J.

Worswick, J.